

UNITED STATES DEPARTMENT OF LABOR

OFFICE OF ADMINISTRATIVE LAW JUDGES

In the Matter of:)	
)	
OFFICE OF FEDERAL CONTRACT)	Case No. 2017-OFC-08004
COMPLIANCE PROGRAMS, UNITED)	
STATES, DEPARTMENT OF LABOR,)	
)	
Plaintiff,)	
)	
vs.)	
)	
GOOGLE, INCORPORATED,)	
)	
Defendant.)	

Friday,
April 7, 2017

Office of Administrative Law Judges
90 Seventh Street, Suite 4-800
San Francisco, California

The above-entitled matter came on for hearing,
pursuant to notice, at 9:01 o'clock a.m.

BEFORE:	THE HONORABLE STEVEN B. BERLIN, Administrative Law Judge
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1 A In this region, it's the largest compliance
2 evaluation we have opened currently. It could -- nationally,
3 it's one of the largest. It's not the largest and probably
4 in the last three or four years, it's one of the top 10
5 largest that we've had at our agency.

6 Q And what is the temporal scope of this compliance
7 review?

8 A Two years. September of 2013 to September 2015.

9 Q And if you could just summarize briefly, there are
10 certain requests that are the subject of this action,
11 correct?

12 A Yes.

13 Q And what are those requests?

14 A So, the first is a second snapshot. So, they
15 provided a September 2015 snapshot in response to the Item 19
16 attachment to the scheduling letter. And so we requested a
17 2014 snapshot. We typically do that when we review and
18 analyze the current year's snapshot and we find systemic
19 compensation disparities. And so in order to determin
20 whether there's a continuing violation, we will look back for
21 the entire review period. So we ask for that prior year's
22 snapshot to determine whether the systemic compensation
23 disparities we found in the current year existed in the prior
24 year.

25 The second thing we asked for was the job and

1 period?

2 A No, because we haven't spoken to many employees.

3 Q Would you, as Regional Director, have the ability
4 to determine whether or not there are any complaints lodged
5 with the OFCCP by a Google employee without having talked --
6 without having spoken to the employee?

7 A I believe we log our complaints in a data base.
8 So, yes, I could have looked at the data base.

9 Q And did you do that?

10 A No.

11 Q You testified earlier that typically the OFCCP
12 would request a second snapshot --

13 A Um-hum.

14 Q -- if it found systemic discrimination from the
15 data it had received from the current year snapshot. Do you
16 remember that testimony, generally?

17 A Um-hum.

18 Q So, did you actually do the analysis on the current
19 year snapshot before requesting a second year snapshot?

20 A Without reviewing deliberative process, we did do a
21 lot of analyses.

22 Q So, I'm asking you did you do it before you
23 requested the second year snapshot?

24 A The first year snapshot was produced at the end of
25 2015 and the second year snapshot was requested in June 2016.

1 So, yes.

2 Q So just to be very clear, is it your testimony to
3 this Court that you conducted a preliminary analysis -- a
4 complete preliminary analysis -- of the first year snapshot
5 before asking for the second year snapshot?

6 A So, the complete preliminary analysis is not what I
7 said. Did we analyze the initial snapshot that was produced
8 at the end of 2015? Yes.

9 JUDGE BERLIN: And did you do that before
10 requesting the second snapshot?

11 THE WITNESS: Yes.

12 BY MS. SWEEN:

13 Q Can you just briefly describe for the Court what it
14 meant by the Item 19, as it relates to the compliance
15 evaluation?

16 A So the Item 19 is part of the itemized listing that
17 is attached to the scheduling that the OFCCP approved.

18 JUDGE BERLIN: Direct me to an exhibit. I just
19 wanted to see the item.

20 MR. PILOTIN: To be helpful, Your Honor, it is --

21 JUDGE BERLIN: I know we looked at it before.

22 MR. PILOTIN: To help everybody, it's Exhibit 5.

23 JUDGE BERLIN: Thank you. So it's Exhibit 5, the
24 attachment, and I have paragraph 19 now. It's Joint Exhibit
25 5-006.

1 the job history for all employees in the Mountain View AAP
2 because of those two factors? So what I'm really trying to
3 get at is, I understand typically you ask for this
4 information if there are certain indicators that lend you to
5 believe it would be helpful. In the Google compliance
6 review, did you find indicators that caused you to believe
7 that the job history for all employees in the AAP would be
8 helpful to your analysis?

9 MR. PILOTIN: Objection, Your Honor. This again
10 goes to the deliberative process and the investigative files.

11 Ms. Sween is asking for the indicators that have been the
12 topic of much discussion before the Court. And, again, I --
13 in addition to objecting on those grounds, I don't see the
14 relevance of this as to the relevance of the information
15 requested in Google's undue burden.

16 JUDGE BERLIN: So let me ask you a yes or no type
17 of a question. I mean, you can add, if you want, but you
18 don't have to.

19 Did OFCCP give any consideration to making the
20 breadth of the request less than the entire work force? Was
21 that something you even considered?

22 THE WITNESS: Yes. If the indicators were limited,
23 we would have to a certain -- if the indicators were the
24 policies at issue were limited to a certain sector, we would
25 consider limiting it. But in this case, that wasn't what we

1 were seeing at this point. We saw indicators that were
2 consistently adverse to women and we also saw policies that
3 were impacting -- potentially impacting.

4 Now, without looking at the history, we cannot
5 pinpoint exactly where the disparities are, you know,
6 stemming from. But we did see a widespread-enough issue that
7 it wasn't -- there wasn't a need to narrow it.

8 Also, we consider the burden, because it was
9 electronically stored. So, with respect to hiring data, it's
10 a lot more burdensome to produce hiring data, generally. You
11 know, the applications, the resumes usually are stored in
12 separate files. I'm just talking generally in our reviews.
13 But compensation data is usually centrally stored,
14 electronic. It's not applicants, it's their actual
15 workforce. So the burden issues don't -- are not as
16 concerning for us with compensation as they are for hiring.
17 Hiring is much -- it's just -- there -- even in this review,
18 it's hundreds of thousands of applicants in the hiring, as
19 opposed to we're just looking at the 20,000 or 21,000 for
20 compensation. So hiring actually presents a much bigger
21 burden in this matter and in most of the matters that we look
22 at.

23 JUDGE BERLIN: All right. So the objection to the
24 question and the form of the question that was asked, the
25 question you asked, Ms. Sween, is sustained. But I hope that

1 Q Did she ask you -- oh, at any time prior to or
2 after the OFCCP on-site, have you spoken to any current or
3 former OFCCP representatives about any matter?

4 A No.

5 MS. SWEEN: Your Honor, I'm going to ask -- I've
6 been given some information that is significant that I need
7 to confer with my counsel on before I can close this
8 testimony. Would you give me two minutes?

9 JUDGE BERLIN: Certainly.

10 MS. SWEEN: Thank you.

11 (Off the record.)

12 JUDGE BERLIN: Let's go back on the record.

13 I had a conference with Counsel off the record and
14 an issue has surfaced which raises potential questions about
15 the process within the department on this particular
16 investigation and what stage it's at. The information
17 includes some hearsay quotes from people. I don't know how
18 reliable the information is. And it can be understood in
19 different ways. It has a certain level of ambiguity to it,
20 which I'm not going to make any attempt to resolve at this
21 point.

22 But I believe that it is potentially significant
23 enough that it has to be resolved before we can proceed.

24 I understand that Google might have a motion that
25 they might choose to make concerning this information. And

1 so I'm going to ask Google to have whatever motion it wants
2 to file on file in this office under seal no later than this
3 coming Wednesday.

4 I'll give OFCCP and the Department one week to
5 respond, under seal.

6 And then I'll give them an opportunity -- and you
7 should go serve each other with just attorneys only, not the
8 entire service list, just counsel on this case.

9 And once I've received these, I've reviewed them
10 and see what I think we need to do next, I think I'll just
11 issue an order and maybe we'll resume the hearing at that
12 point, maybe something else will be needed. I really have no
13 idea, because I don't even know what the motion would be. So
14 I don't want to suggest what my ruling might be on this.

15 So, I have tried very hard to get this expedited
16 and completed and I've resisted things that caused even minor
17 delays in the process and tried to bring it to a conclusion
18 at the hearing today. So, I've done my best in that regard,
19 but I just don't think I can do anything more and I think my
20 only choice is to adjourn and to allow the motions to -- the
21 motion, if any, to be heard.

22 Ms. Sween, if Google decides that no motion is
23 needed and we can just resume, please just alert me and the
24 Solicitor to your choice. But, otherwise, I'll look forward
25 to your motion by Wednesday.

1 Any --

2 MS. SWEEN: Can I -- a point of clarification?

3 JUDGE BERLIN: Yes. Well, I was going to say does
4 anyone want to be heard?

5 MS. SWEEN: Yes, Your Honor.

6 JUDGE BERLIN: Yes?

7 MS. SWEEN: Two things. One, would it be possible
8 for you to give the moving party an equal amount of time as
9 the opposition party? If you're giving them a week, can we
10 have until Friday to get the motion to Your Honor?

11 JUDGE BERLIN: Yes.

12 MS. SWEEN: Number two, Your Honor had also
13 requested additional briefing that was due next week. Can we
14 get a stay on that?

15 JUDGE BERLIN: Yes.

16 MS. SWEEN: Thank you, Your Honor.

17 JUDGE BERLIN: That deadline is vacated. All
18 right.

19 So I was asked to review a document with respect to
20 this issue. Counsel are aware of what the document is. I've
21 marked that document as ALJ-3 for the record.

22 (Administrative Law Judge
23 Exhibit No. 3 was marked for
24 identification and received into
25 evidence.)

1 JUDGE BERLIN: So I'm going to include it in the
2 record.

3 Anything else anyone wants to be heard on at this
4 point?

5 MS. SWEEN: No, Your Honor. Thank you very much.

6 MR. PILOTIN: Not at this time, Your Honor. Thank
7 you.

8 JUDGE BERLIN: All right. We're adjourned.

9 (Whereupon, the proceedings recessed at 4:16
10 o'clock p.m.)

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REPORTER'S CERTIFICATE

TITLE: Office of Federal Contract Compliance Programs,

US Department of Labor versus Google, Inc.

CASE NUMBER: 2017-OFC-08004

OWCP NUMBER: N/A

DATE: APRIL 7, 2017

LOCATION: SAN FRANCISCO, CALIFORNIA

This is to certify that the attached proceedings before the United States Department of Labor, were held according to the record and that this is the original, complete, true and accurate transcript which has been compared to the reporting or recording accomplished at the hearing.

SIGNATURE OF REPORTER

DATE